

## Improving, but not equalising opportunity

Millward, Chris

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# Improving but not equalising opportunity: the objective and effect of regulating fair access to higher education in England, and their implications for understanding higher education policy

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# Improving but not equalising opportunity: the objective and effect of regulating fair access to higher education in England, and their implications for understanding higher education policy

Chris Millward 

School of Education, University of Birmingham, Birmingham, UK

## ABSTRACT

Since 2006, universities in England that want to charge higher fees to their domestic undergraduates have been required to agree a plan with an access regulator appointed by the government. This article identifies the objective for the regulation as equalising opportunity, then considers its effect, drawing on policy literature, ministerial statements, legislative and regulatory texts, and national data. In doing so, it exposes how the policy objective has been implemented through legislation, regulatory guidance and university practice, and how this has yielded improving but not equalising opportunity. This is due to the limited influence of the powers available to, and guidance issued by, the regulators in a system of competing autonomous universities, which yields stratification based on the entry grades of young people and their social background. The lesson for higher education policy is the imperative for closer alignment between policy objectives, legislation to empower their implementation, approaches taken by regulators and university practice. In competitive systems within which universities have autonomy in relation to their admissions, policies to equalise opportunity require legislation and regulation that is influential enough for universities to prioritise more equitable outcomes ahead of other imperatives.

## KEYWORDS

Higher education regulation; funding; fair access; equality of opportunity; higher education policy

## Introduction

Since 2006, universities and colleges in England have been required to agree a plan to promote equality of opportunity in order to be permitted to charge higher level fees to their domestic undergraduate students. The plans, initially called Access Agreements and since 2018 Access and Participation Plans (Office for Students, 2023), have enabled annual tuition fees to be charged beyond a basic level of £1,000 up to £3,000 from 2006, then beyond £6,000 up to £9,000 from 2012 (Bolton, 2012) and £9,250 from 2017–18. Tuition fees are paid to universities by the government and then re-paid as interest-bearing loans by graduates as a proportion of their salary above an annual threshold between £22,015

**CONTACT** Chris Millward  [c.millward@bham.ac.uk](mailto:c.millward@bham.ac.uk)  School of Education, University of Birmingham, Edgbaston, Birmingham B15 2TT, UK

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and £27,660. The loans are written off at the end of a re-payment period, which was set at 30 years during the period covered by this article. This arrangement provides a significant proportion of income for most of England's universities (Higher Education Statistics Agency, 2022). The re-payment terms have been subject to successive changes by governments seeking to balance affordability to students, graduates and the state (Bolton, 2021; Office for National Statistics, 2018).

Access regulation has been the responsibility of an individual appointed by the government, initially a Director for Fair Access (DFA) leading the Office for Fair Access (OFFA), then from 2018 a Director for Fair Access and Participation (DFAP) on the board and executive of the Office for Students (OfS). The author served as the first DFAP until 2021. The article draws on this experience within the framework of research literature that explores how higher education policy objectives are adapted through the process of implementation and the involvement of different agents (Saarinen & Ursin, 2012).

Access policy in England has been delivered within the structure of the nation state (Enders, 2004), but the approach of the regulators has changed within and between governments. The article demonstrates this by analysing the policy objective, legislation and regulation across three phases of access regulation between 2006 and 2021. These phases have been characterised by a common objective to equalise opportunity and only limited change to the legislation, but different regulatory priorities and approaches. They extend from the Labour government's establishment of an access regulator in 2006 to support its target for 50% of the young cohort to participate in higher education until its replacement by a Conservative-Liberal Democrat coalition in 2010, during which the regulator focused on securing bursaries to mitigate the effect of higher tuition fees; the coalition period of 2010–2015 until the establishment of the OfS by a Conservative majority government in 2018, during which bursaries were supplemented by substantial outreach to raise the ambitions and improve the preparedness of students from under-represented groups; and the new regulator's first four years of activity between 2018 and 2021, when it sought demonstrably to equalise opportunity by encouraging progressive measures such as contextual admissions. The article also considers the reasons for the regulator's shift in focus towards attainment raising in schools from the beginning of 2022 and the potential consequences of this.

The effect of these approaches has been influenced by the motivations and constraints of actors – in this case politicians, regulators and university staff – and the agency between them. As in other areas of English higher education policy (Ashwin, 2022; McCaig, 2018; Saunders, 2011), the objectives stated by ministers have been different from the instruments agreed by parliament through legislation, deployed by regulators through guidance and intervention, and delivered by universities through their own policies and practices. There is a vibrant culture of debate around higher education policy in England, fuelled by social media, think tanks, mission groups and advisers within universities, so the policy objective for access regulation has had more effect than mere 'rhetoric' (Saarinen, 2008). It has, though, been re-shaped through its application at different levels of the system, and its effect has been constrained by the factors beyond access regulation that influence patterns of access and participation, particularly the influence of social background earlier in the education system and competition between autonomous universities, which drives stratification based on the entry grades of young people.

The article builds on existing studies of the framing and implementation of access policies in England and other countries (Deem et al., 2022; Dougherty & Callender, 2020;

Salmi & D’Addio, 2021; Tavares, 2022; Whitty et al., 2015), but it is conceptually distinctive in its approach to exposing the gap between the policy objective, the powers made available and approaches adopted to deliver it, and the outcomes ultimately achieved. It addresses this by exploring how ministerial statements, as well as legislative and regulatory texts, demonstrate the objective for access regulation and how it has been delivered by the regulators. It then analyses the effect of access regulation using data on patterns of entry to English higher education during its first 15 years. The article concludes by considering the causes of these patterns and their implications for higher education policy.

## The policy objective for access regulation

The introduction of access regulation in 2006 formed one element of a broader set of higher education reforms intended to support increasing higher education participation. The policy objective was set out in a speech by the then Labour Prime Minister Tony Blair:

As a nation, we are wasting too much of the talent of too many of the people. The mission must be ... to break down the barriers that hold people back, to create real upward mobility, a society that is open and genuinely based on merit and the equal worth of all ... I want to achieve a university participation rate of over 50% among the under 30s. (Blair, 2001)

Within this meritocratic vision, measures to increase higher education participation sought to equalise the opportunity to compete for positions across society. Supporting more people to gain higher education qualifications would, it was hoped, enable their capabilities, rather than their origins, to determine their destinations (Bukodi & Goldthorpe, 2019; Littler, 2017; Sandel, 2020). This would, though, require more equitable outcomes, demonstrable by a reduction in the gap between the most and least represented groups gaining entry to higher education overall and to the universities with the highest academic entry requirements, which are more likely to lead to the most influential and well-paid jobs (Belfield et al., 2018; Sutton Trust and Social Mobility Commission, 2019; Wakeling & Savage, 2015).

The Labour government had concluded that an increase in fees up to £3,000 was essential for increasing participation whilst sustaining the quality and standing of English universities. It faced difficulties, though, persuading its own members of parliament, so together with measures to link re-payments to earnings and improve maintenance grants, the establishment of an ‘access tsar’ was intended to provide assurance that the fee increase would not deter participation by the poorest students in the most selective universities (Shattock, 2012).

The arrangements put in place from 2006 would, though, prove to be short-lived. Following the 2007 banking crash, English higher education initially gained additional investment through measures to stimulate the economy (Higher Education Funding Council, 2010), but the government also established an independent review to report after a general election scheduled for 2010 (Browne, 2010). A new Conservative-led coalition then announced the transfer of £3 billion university teaching grants into tuition fees up to £9,000 from 2012–13, which would again be re-payable as a proportion of earnings above a minimum threshold. This was intended to reduce government spending on higher education, whilst

sustaining quality and increasing participation. Students would be compensated for their additional financial contribution by the empowerment of their choices within a more competitive system (Department for Business Innovation and Skills, 2011a) and the least represented would benefit from stronger access regulation (Willets, 2019).

This was reflected in the new Secretary of State's guidance to the access regulator:

We are asking you to do more ... We want to make Britain a more open and meritocratic society, in which talent is not wasted ... insufficient progress on access has been made, particularly in the most selective institutions. (Department for Business Innovation and Skills, 2011b)

This re-affirms the meritocratic objective to equalise opportunity when access regulation was first proposed eight years earlier, but it expects more from the regulator and regulated universities, particularly those with the highest academic entry requirements.

Once it had achieved its own majority through the 2015 election and positioned the access regulator within a market regulator, the Conservative government set the same meritocratic policy objective to equalise opportunity:

This Government has made it a part of everything we do to drive fairness of opportunity ... we believe that anyone with the talent and potential should be able to benefit from higher education. (Department for Business, Innovation and Skills, 2016)

In summary, governments of different parties sustained a common meritocratic objective to equalise opportunity during the first 15 years of access regulation in England. The delivery of this objective was, though, subject to the powers made available to the regulators.

## **The legislative basis for access regulation**

The statutory role of Director for Fair Access was proposed in the 2003 White Paper on the future of higher education (Department for Education and Skills, 2003) and enshrined in the 2004 Higher Education and Research Act. The Act enabled sanctions to be applied in the event that the commitments within the approved Access Agreements were not honoured, either through an instruction to the Higher Education Funding Council (HEFCE) to reduce its grant or ultimately refusal to renew a plan and thereby prevent the charging of higher fees. This last measure – later to be described as a 'nuclear button' (BBC, 2012) – would be subject to independent review.

The framing and approval of the agreements were governed by provisions within the primary legislation and secondary regulations, which made clear that it would be university governing bodies, rather than the regulator, that would determine the content of plans. Universities would make 'provisions relating to the promotion of equality of opportunity' to include 'in particular ... measures to attract applications from prospective students who ... are under-represented in higher education', 'financial assistance to students' and 'information about financial assistance' (Higher Education Act, 2004).

Crucially, the Director for Fair Access was required:

to protect academic freedom including, in particular, the freedom of institutions to determine ... the criteria for the admission of students and apply those criteria in particular cases. (Department for Education and Skills, 2004)

This initial statutory basis for access regulation has changed little since, notwithstanding fundamental changes to the scope and scale of the activity regulated.

When the decision was taken to increase tuition fees from 2012, the Secretary of State's guidance requested advice:

about ways in which the approach could usefully be strengthened, including any additional powers or requirements that may be needed in order to secure rapid progress. We will want to consider your report as we consider future legislation. (Department for Business Innovation and Skills, 2011b)

Despite this, the coalition government did not strengthen the Director's powers. The legislation was ultimately changed through the Higher Education and Research Act 2017 (HERA), which established the OfS as the regulator of English higher education, bringing access regulation together with other aspects of public concern such as quality and financial sustainability within a registration system intended to promote competition and choice.

During the passage of HERA through parliament, the government faced scrutiny about the integration of the Director's role within an organisation with wider responsibilities. In response, it sought to demonstrate that access regulation would broadly continue with the powers adopted to date, albeit with explicit reference to participation – 'ensuring that students are supported to participate, succeed and progress to good outcomes' – alongside access. In the words of an explanatory memorandum:

HERA replaces the existing system for the contents, approval and variation of access agreements with new arrangements which largely replicate the existing position. The main changes are to ensure that plans should cover not only access to higher education but also participation activities. (Department for Business Innovation and Skills, 2018)

Although the regulations specifically governing access and participation plans were largely unchanged, this was positioned within a broader regulatory framework based on conditions of registration for access to public funding. In evidence to the Public Bill Committee, the then Minister stated:

The OfS will have a new duty requiring it to consider equality of opportunity in connection with access and participation across all its functions, so widening access and participation for students from disadvantaged backgrounds truly will be at its very core. (Johnson, 2016)

The regulator was required to have regard to equality of opportunity across all of its regulatory decisions. It could also approve a university's plan whilst applying specific conditions of registration. This would enable more proportionate intervention than the 'nuclear button' of refusal, which had been threatened but never deployed. The OfS would, though, continue to be subject to the requirement for universities to determine the content of their plans and to protect autonomy in relation to admissions, which had constrained the scope and effect of the measures adopted by its predecessors.

## The delivery of access regulation in practice

By appointing a former Vice Chancellor and President of the universities' representative body as the first Director for Fair Access (Press Association, 2004), the Labour government sought to provide assurance that universities would determine their own approaches to equalising opportunity. Its first guidance to the new regulator stated that 'it is for institutions to make proposals to you for what they undertake to do to safeguard and maintain access' and:

there has been concern that the poorest students applying to higher education may be put off because of the perceived deterrent of higher fees ... for this reason a central plank in our policy is to ensure that this perceived deterrent is minimised. (Department for Education and Skills, 2004)

With this in mind, in the first year of the new fee regime in 2006–07 the new Director negotiated spending of £99 m on bursaries for disadvantaged students and £21 m on outreach from 96 higher education institutions, which was around 20% of the additional fee income gained (Office for Fair Access, 2008). By 2011–12, the level of investment had increased to £387 m on bursaries and £58 m on outreach by 122 higher education institutions and 67 further education colleges, but this was again around 20% of the additional fee income, reflecting inflationary increases to fee levels, increasing student numbers and more universities and colleges than initially expected seeking access agreements in order to charge higher level fees (Office for Fair Access and Higher Education Funding Council for England, 2013). Student demand did not appear to be influenced by increasing tuition fee levels or indeed differences between them. This is because students recognised that the cost to them would be a proportion of their future earnings above a threshold within a re-payment period, rather than the up-front tuition fee paid by the government.

In its report on 2006–07, the new regulator heralded 'a diverse range of creative financial packages' focused on 'the need to ensure that no one is deterred from applying to higher education on financial grounds' (Office for Fair Access, 2005). By 2011, though, it was encouraging institutions to 'concentrate more on the outcomes of their work', not least because 'although participation has widened significantly across the sector in the last five years, this has not been the case at the most selective universities' (Office for Fair Access, 2011, p. 6).

This position was influenced by statistical analysis suggesting that the bursary packages being offered through access agreements were not affecting student behaviour, nor access to the most selective institutions, concluding that:

The introduction of bursaries has not influenced the choice of university for disadvantaged young people; applications from disadvantaged young people have not changed in favour of universities offering higher bursaries. (Corver, 2010, p. 2)

When the new higher annual tuition fee of up to £9,000 was introduced from 2012–13, it was made clear to universities that they would be expected to contribute one third of their additional fee income to their access agreements and this would be re-negotiated each year. Increasing tuition fees was also mitigated by a £150 m National Scholarship Programme, which was introduced despite the



evidence that financial contributions of this kind had little influence on student behaviour, subsequently confirmed by evaluation of the scheme. (CFE and Edge Hill University, 2016)

By the first year of the new tuition fee and access regime in 2012–13, the government had appointed a new Director for Fair Access, with the intention of providing greater challenge to the most selective universities. Most universities continued to charge the highest tuition fee, enabled by re-payable loans again minimising the influence of up-front fee-levels on student demand. Given the expectations set before the first year of the new tuition fee regime, this led to substantial increases in access agreement investment. There was, though, more focus on outreach to schools and colleges, with the aim of encouraging and supporting students to progress to university, particularly the most selective institutions. In 2012–13, universities and colleges spent £564 m through their access agreements, including £74 m on outreach and £417 m on financial support for students (Office for Fair Access and Higher Education Funding Council for England, 2014). In OFFA's final year of operation in 2017–18, this had increased to £785 m, including £152 m on outreach and £396 m on financial support (Office for Students, 2019b).

When OfS replaced OFFA from 2018, it sought demonstrably to make progress on equalising opportunity by shifting the focus of access regulation from inputs such as bursaries and outreach to more equitable outcomes, framed as reducing the gap between the most and least represented groups entering and succeeding in higher education. Due to the link between access and participation plan approval, registration with the new regulator and public funding, this intention could for the first time be delivered through sanctions short of refusing a plan (Times Higher Education, 2017). The pursuit of more equitable outcomes would, though, need to be defensible in relation to the regulator's statutory powers, which continued to be focused on promoting equality of opportunity through plans determined by universities themselves, whilst protecting autonomy in relation to admissions.

In order to address this, the OfS challenged the most selective universities to re-think their assumptions about merit within admissions (Office for Students, 2019a). Through contextual admissions, universities could give greater consideration to the potential of students from under-represented groups by accounting for the influence of factors such as family background, location and schooling on examination results. This was justified by the regulator within the legal framework for access and participation regulation on the basis that it would be consistent with the notion of fair equality of opportunity, which seeks to ensure not just fair policies and processes but also a fair chance to succeed (Boliver & Powell, 2022; Boliver et al., 2021; Millward, 2021; Rawls, 1971).

Contextual admissions focus on individual academic potential, rather than group injustice or indeed the desirability of a diverse cohort, which underpin affirmative action and the crafting of a class in the U.S.A. (Bowen et al., 2018; Duffy & Goldberg, 2016). In doing so, they pursue more equitable outcomes by seeking to mitigate the consequences of wider inequality and injustice, rather than addressing them directly (Boliver et al., 2015; Gorard et al., 2019; Mountford-Zimdars & Moore, 2020; Mountford-Zimdars et al., 2021). Like the measures adopted by previous regulators, this was consistent with the meritocratic vision articulated by successive governments but not in itself sufficient to deliver on the policy objective to equalise opportunity.

## Improving but not equalising opportunity

From 2006, the activities conducted by universities through their agreements with the access regulators, coupled with measures to increase places in higher education financed by sharing the cost with students through re-payable loans, supported a substantial increase in young higher education participation in England, including among under-represented groups. Although the Labour government's 50% participation target for the 18–30 cohort was abandoned by its successors from 2010, their strategies for continuing to increase participation enabled it to be achieved in 2019 (Department for Education, 2019). This must, though, be qualified. Students from all backgrounds increased participation across the period, yielding improved opportunity to access higher education, rather than equalising opportunity.

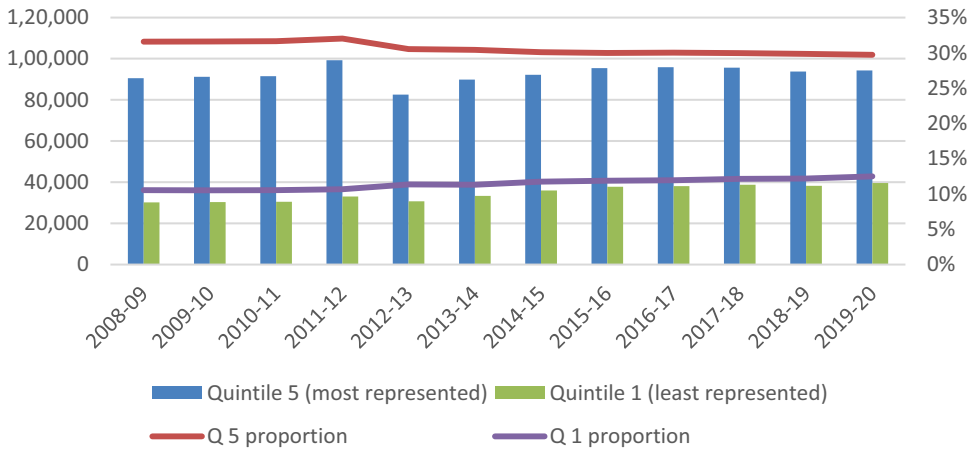
Under-representation in higher education may be measured in different ways, as demonstrated by the range of indicators published by the regulator (Office for Students, 2020) and the government in England (Department for Education, 2021c). The analysis in this article focuses on the POLAR classification of local areas by their rates of higher education participation and the identification of pupils eligible for free school meals (FSM) on the basis of their household income. Neither measure adequately captures the intersecting factors that can influence access to higher education. POLAR demonstrates the influence of location, and this is significant in England due to its high level of spatial inequality, which has a strong relationship with the pattern of higher education participation and graduate employment (Overman & Xu, 2022). However, the size of the areas used within the measure leads to the inclusion of individuals with no other features of educational disadvantage (Boliver et al., 2022). FSM enables an understanding of the relationship between household income and educational progression, but it includes individuals whose other characteristics – such as location, ethnicity and gender – suggest a high likelihood of higher education participation (Department for Education, 2022b). These are, though, the measures most commonly deployed by the regulators and the government during the period covered in this article.

The number of young UK-domiciled students from neighbourhoods in the lowest participation quintile entering English higher education providers increased by 31% between 2008–09 and 2019–20, but this represents an increase from only 11% to 12% of the cohort (Office for Students, 2021, Table 2), as demonstrated by [Figure 1](#).

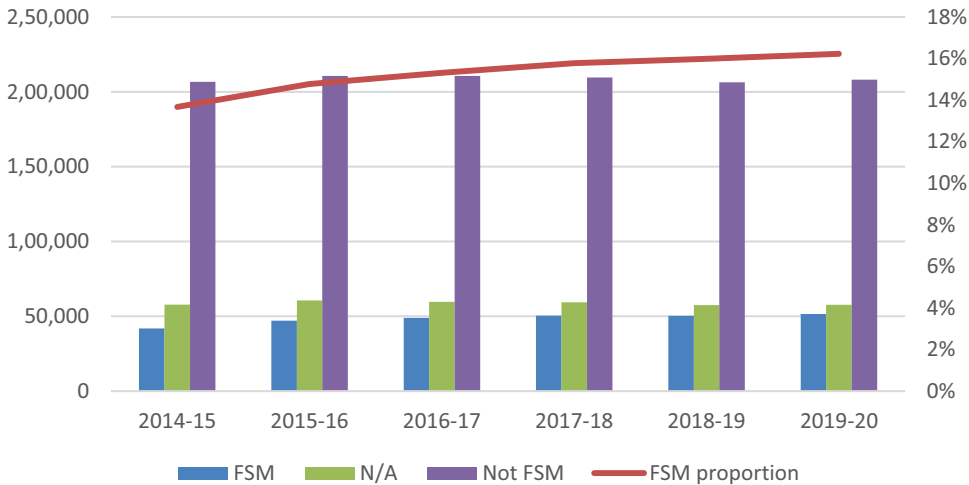
The number of students from the 20% of households (Department for Education, 2021a) eligible for free school meals increased by 23% during the six years for which records are available up to 2019–20, but this represents an increase from only 14% to 16% of the cohort (Office for Students, 2021, Table 2), as demonstrated by [Figure 2](#).

Improved access for students from under-represented groups was mostly delivered by universities with lower academic entry requirements, despite the most selective universities being a priority for access regulation from its inception. The number of young UK-domiciled students from neighbourhoods in the lowest participation quintile increased by 43% between 2008–09 and 2019–20 in the universities with the highest third of entry tariffs, but this represents an increase from only 6% to 7% of the cohort (Office for Students, 2021, Table 2), as demonstrated by [Figure 3](#).

The position for the 20% of students eligible for free school meals was marginally better, increasing by 57% between 2014–15 and 2019–20 in these universities, but this



**Figure 1.** Number and proportion of young entrants to English higher education from most and least represented groups (POLAR).

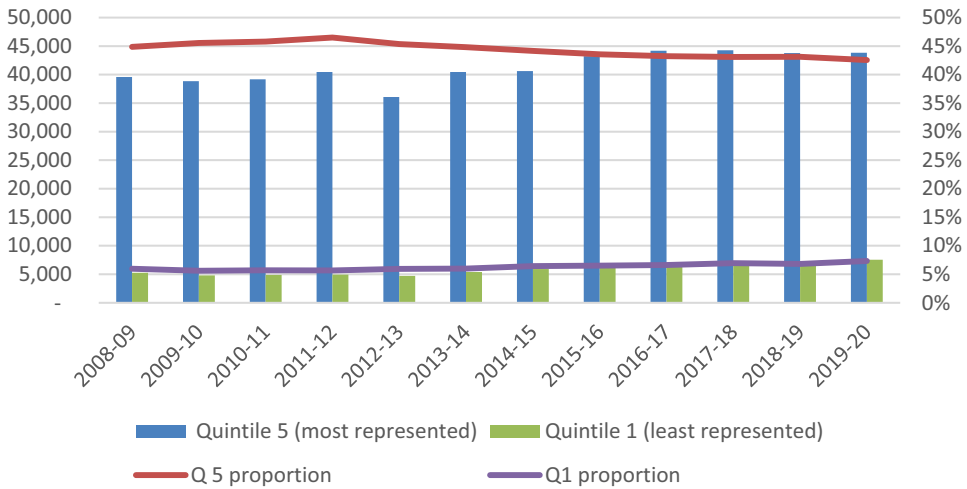


**Figure 2.** Number and proportion of young entrants to English higher education eligible for Free School Meals (FSM).

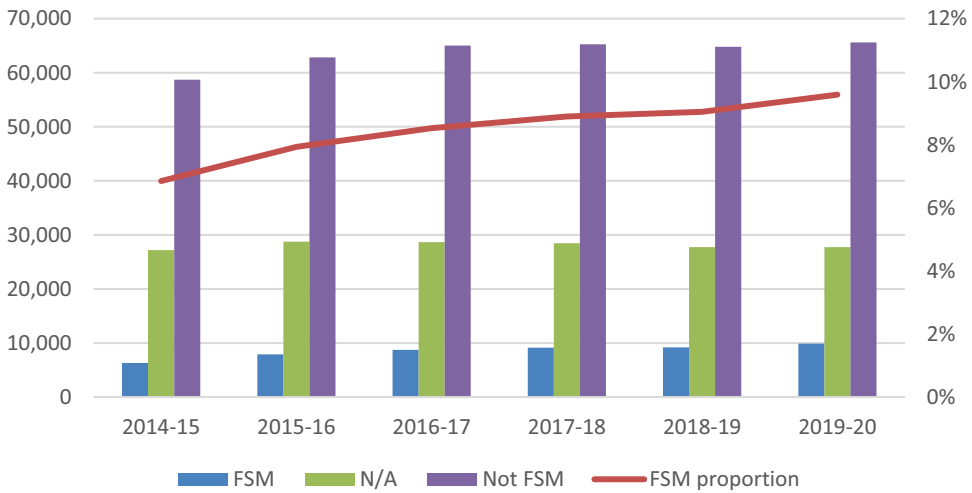
still represents an increase from only 7% to 10% of the cohort (Office for Students, 2021, Table 2), as demonstrated by Figure 4.

There were 2,280 more students from the lowest participation quintile and 3,580 more who had been eligible for free school meals entering the highest tariff universities in 2019–20 than in 2008–09, but 4,240 more from the highest participation quintile and 6,890 who were not eligible for free school meals.

The opportunities to mitigate these patterns for young people through entry to higher education later in life diminished across the period. There were 142,000 fewer students studying part-time and entering higher education after the age of 21 in 2019–20 compared with 2008–09, a reduction of 69%, from 34% to 12% of the cohort (Office for Students, 2021, Table 3), as demonstrated by Figure 5.



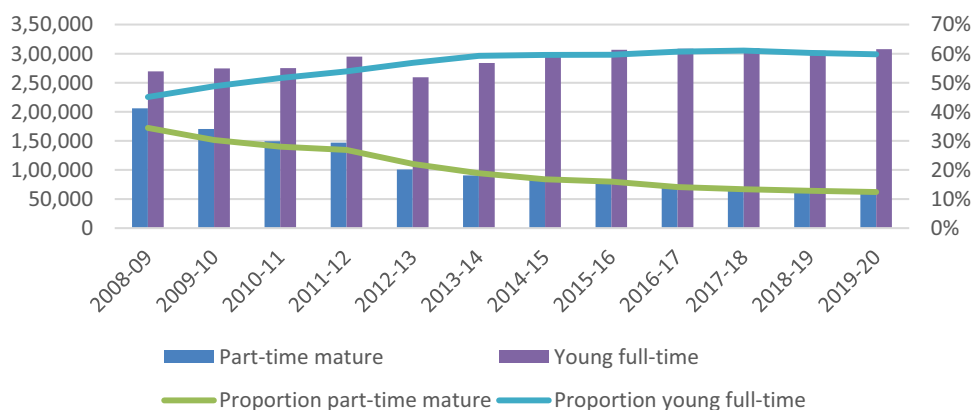
**Figure 3.** Number and proportion of young entrants to English high tariff universities from most and least represented groups (POLAR).



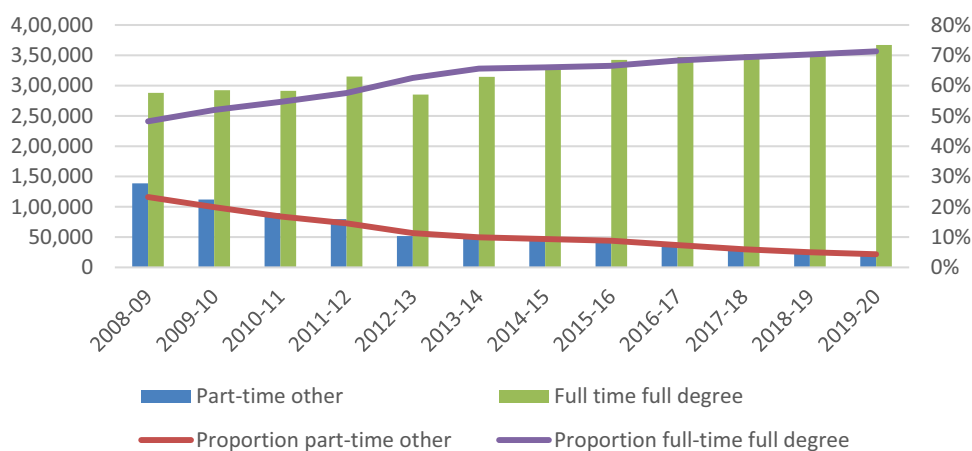
**Figure 4.** Number and proportion of young entrants to English high tariff universities eligible for Free School Meals (FSM).

This was significantly influenced by the reduction in part-time study below the level of a full degree, which decreased by 116,280 or 84%, from 23% to 4% of the cohort, during the same period (Office for Students, 2021, Table 4), as demonstrated by Figure 6.

The shift to remote learning and changes to assessment practices in schools, colleges and universities during the coronavirus pandemic, coupled with measures to avoid students missing out on university due to disruption to their learning and examinations, appear to have compounded these patterns. Grades published for GCSE, A-level and vocational qualifications (Education Policy Institute, 2022; Ofqual, 2021) confirm that students from the most prosperous schools and communities strengthened their position



**Figure 5.** Number and proportion of entrants to English higher education who are mature (+21) and studying part-time or young (–21) and studying full-time).

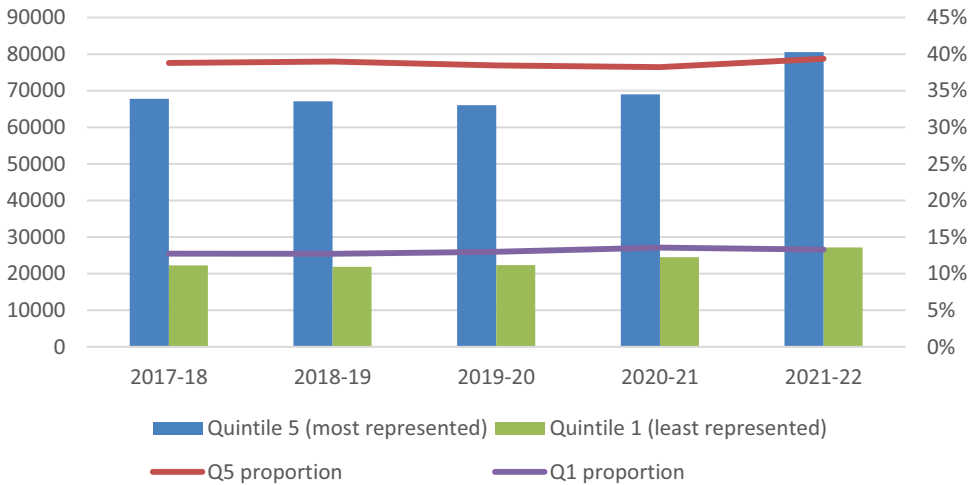


**Figure 6.** Number and proportion of entrants to English higher education studying part-time for a qualification below a degree or full-time for a degree.

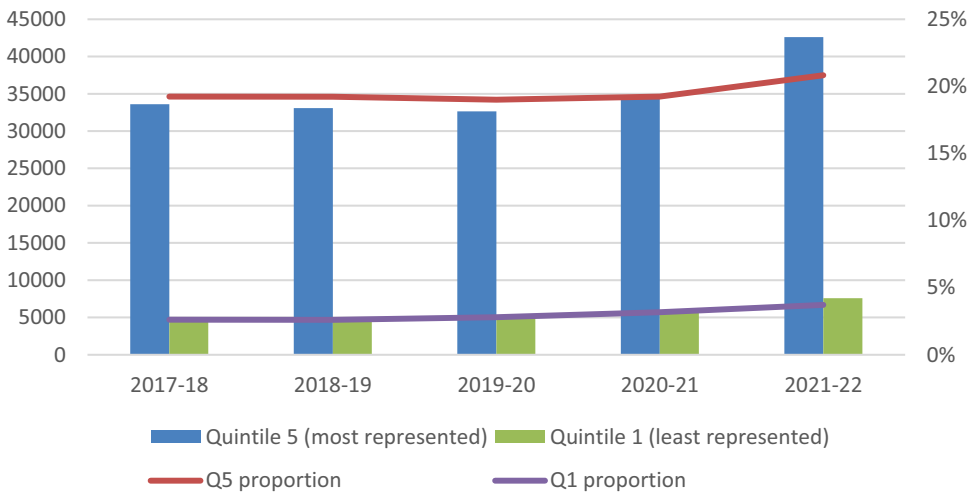
relative to others during the pandemic. This influenced university admissions, with record numbers of students entering higher education from the lowest participation neighbourhoods, but even more students entering from the highest, particularly in the most selective universities. Across the UK as a whole, the number of young placed applicants from neighbourhoods in the lowest participation quintile increased by 22% between 2019 and 2021, but they remained only 13% of the cohort UK-wide (UCAS, 2022), as demonstrated by Figure 7.

The number of young students from neighbourhoods in the lowest participation quintile placed in the highest tariff universities increased by 58% between 2019 and 2021, but this represented an increase from only 3% to 4% of the cohort placed in these universities UK-wide, as demonstrated by Figure 8.

There were 2,785 more students from the lowest participation quintile neighbourhoods entering the highest tariff universities UK-wide in 2021 than in 2019, but 8,115



**Figure 7.** Young applicants placed in UK higher education from most and least represented groups (POLAR) before and during the coronavirus pandemic.



**Figure 8.** Young applicants placed in UK high tariff universities from most and least represented groups (POLAR) before and during the covid pandemic.

more from those in the highest participation quintile. The Universities and Colleges Admissions Service (UCAS) has also confirmed that this pattern can be seen when the area-based participation measure is aligned with eligibility for free school meals (Jordan & Rowley, 2022).

The effect of the pandemic, therefore, was to compound the pattern across the previous decade: improving, but not equalising opportunity to access higher education for students from under-represented groups. This is despite the sustained policy objective to equalise opportunity and the weight of regulatory activity and university investment arising from it.

## Conclusion

The policy objective for access regulation in England has been to equalise opportunity in relation to access to higher education. This has been put into practice through legislation empowering the access regulators to promote equality of opportunity by agreeing plans determined by universities themselves and whilst protecting academic freedom in relation to admissions.

From 2006 to 2018, the access regulators delivered this by encouraging bursaries to the poorest students, then extending this to outreach for the purpose of raising ambitions and the preparedness of students in schools and colleges. With the establishment of a new higher education regulator in 2018, these measures were supplemented by the promotion of more progressive admissions policies, which would judge the potential of learners from the most under-represented groups by accounting for the context in which their grades had been achieved.

These measures have been unable to deliver the policy objective because their influence has been weaker than the competitive imperatives for autonomous universities within the English system. Family ambitions drive increasing participation in higher education worldwide (Marginson, 2016). In unequal societies and competitive hierarchical higher education systems, this causes stratification (Cantwell et al., 2018) unless there is robust intervention from government to counter it. England is particularly vulnerable to stratification due to its strong relationship between social background, school attainment and university admissions. Family background and resources, together with factors such as location and schooling, have a particularly powerful influence on examination results in England (Crawford, 2017). But this has been compounded by the extent to which competition has been embedded within the reforms to English higher education finance since 2010. Competition has the effect of strengthening the relationship between the most prestigious universities and the most privileged groups because it encourages them to demonstrate the characteristics of selectivity and high attainment necessary to attract each other (Amaral, 2022).

In recent guidance to the access regulator, ministers have suggested that the government's reforms since 2010 have 'fundamentally changed standards in schools', giving 'pupils access to a knowledge-rich curriculum, rigorous assessment and qualifications, and high-quality teaching' (Department for Education, 2021b, p. 1). These reforms have also, though, been accompanied by a failure to make progress on the attainment gap in schools, which has been addressed through a pupil premium for the poorest students since 2011. Progress on reducing this gap flattened in the middle of the decade, then began to worsen (Education Policy Institute, 2020) even before the deleterious effect of the pandemic. Its influence on university admissions has been strengthened by continued demand for and investment by families seeking a competitive advantage within examinations and selective university admissions through private education and tutoring (Major & Machin, 2018), as well as competitive pressures within universities for admissions officers to select the 'brightest and best' (Boliver et al., 2018) whose entry grades would figure positively within league tables.

Alongside this, system incentives – extending from high levels of demand from young students, the alignment of full-time education with overseas recruitment and campus services, and the removal of public funding from lower intensity studies short of a full

qualification – have deterred universities from recruiting part-time and mature learners, thereby reducing the opportunities for students who may not have achieved high grades in school (Callender & Thompson, 2018).

These factors have proven to be stronger than the statutory powers available to the access regulators and the activities they have encouraged, which extend from bursaries to outreach and contextual admissions. Measures such as these serve to mitigate the effect of wider social inequalities on university admissions, but they are outweighed by the strength of the relationship between social background and school attainment, and the extent to which autonomous universities reward entry qualifications in competitive and hierarchical systems.

Notwithstanding this, contextual admissions have been controversial due to their perceived impact on the admissions prospects of privately educated students in the most highly selective universities (Green & Kynaston, 2019). Ministers in England initially supported the OfS' advocacy of contextual admissions (Skidmore, 2019). By 2021, however, government guidance reminded it to 'promote equality of opportunity, not equality of outcome' (Williamson, 2021). This was supplemented by further guidance the following year, which advised:

that all providers contribute, in earnest, to raising the prior academic attainment of all students, including those from disadvantaged and under-represented groups ... providers are strongly encouraged to quickly channel their efforts towards interventions which have a positive and lasting impact. (Department for Education, 2022a)

This seeks to shift the activity conducted by universities through their access and participation plans towards raising attainment in schools, rather than broadening their conception of merit within admissions. There has, though, been no change to the legislation underpinning access regulation, so there are no powers to require universities to conduct work of this kind, or indeed make regulatory interventions if – as appears likely given the range and complexity of the factors influencing attainment in schools – it has little effect (Millward, 2022). This suggests that there will be a continuation of the experience of access regulation to date, through which the regulators have implemented measures within the constraints of the powers available to them, but they have ultimately fallen short of the policy objective to equalise opportunity because they have been outweighed by other influences on the system.

The lesson for higher education policy from the English experience of access regulation is the imperative to close the gap between policy objectives, legislation passed to implement them, the translation of legislation into practice by regulators, and the policies and practices ultimately deployed by universities. This requires dynamic engagement between governments, regulators and universities (Jongbloed, 2003), rather than assuming that ministerial statements and regulatory requirements will yield the desired effect. In competitive systems with autonomous universities, policies to equalise opportunity require legislation and regulation that is influential enough for universities to prioritise more equitable outcomes ahead of other imperatives.

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## Disclosure statement

The author served as the Director for Fair Access and Participation on the board and executive of the Office for Students so was directly involved in some of the developments described in this article.

## Notes on contributor

*Chris Millward* joined the University of Birmingham in January 2022 as Professor of Practice in Education Policy. From 2018–21, he served as the first Director for Fair Access and Participation at England's higher education regulator, the Office for Students. He was Director of Policy, Associate Director and Regional Consultant at the Higher Education Funding Council for England from 2006–17 and Head of Research Programmes at the UK Arts and Humanities Research Council from 2002–06.

## ORCID

Chris Millward  <http://orcid.org/0000-0003-4732-2114>

## Data availability statement

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